IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

OP.No. 22994 of 2000(S)

PETITIONERS:
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1. NARUVAMOODU PRAMOD,
'ROHINI',
NADUKKADU,
NARUVAMOODU P.O.,
THIRUVANANTHAPURAM 20, PIN 695 020.

2. M.K. PARAMESWARAN,
AGED 55 YEARS,
KANJULLY HOUSE,
SREE KRISHNA BHAVAN,
P.O. CHATHANNUR, PALAKKAD DISTRICT.

3. K.N. BABY SHEEBA,
W/O. V.S. VINAYAKUMAR,
AGED 30 YEARS,
VALIYAPARAMBIL VEEDU,
EZHUMANGAD,
ARANGOTTUKARA P.O., PALLAKKAD DISTRICT.

4. BINDU T.,
W/O. V.S. BIBIN KUMAR,
VALIYAPARAMBIL VEEDU,
EZHUMANGAD,
ARANGOTTUKARA P.O., PALLAKKAD DISTRICT.

5. SUJESH K.,
AGED 25 YEARS,
ADVOCATE,
S/O. K. SETHUMADHAVAN NAIR,
KORAPPATH HOUSE, ANCHERY P.O.,
THRISSUR – 680006.

6. C.V. SANKARA NARAYANAN,
S/O. SAROJINI AMMA,
CHULLIYIL VELUTHEDATH,
P.O. CHAZHIYATHIRI,
VIA. PERINGOD, PALAKKAD DISTRICT.

7. P.S. SOMASUNDARAN,
S/O. SANKARAN,
PULIKKATHARA HOUSE,
AYYANTHOLE, TRICHUR DIST.

8. K. UNNIKRISHNAN,
S/O. KUNJUKUTTAN,
KUVVAPPATTIL HOUSE,
CHAZHIYATTIRI P.O.,
PALAKKAD DISTRICT.

9. K. BALACHANDRAN,
SUBITHA SADAN,
VELLADIKUNNU,
P.O. NELLIKKATTIRI – 679 533
PALAKKAD DISTRICT.

10. A.P. MANIKANDAN,
S/O. CHANGAN,
ASASIPPADI HOUSE,
P.O. CHATHANNUR,
VIA. PERINGODE,
PALAKKAD DISTRICT.

11. R. SATHEESAN,
S/O. R. SREEDHARAN NAIR,
RAYIRATH HOUSE,
MANNUTHY P.O.,
THRISSUR DISTRICT.

12. T.P. SAIDALAVU,
S/O. T.P. KUNJALAN,
THEKKEPEEDIKAYIL,
P.O. CHATHANNUR,
VIA. PERINGODE, PALAKKAD DISTRICT.

13. V.R. RAMANCHANDRAN,
ADVOCATE,
VALIPPARAMBIL HOUSE,
AYYANTHOLE,
THRISSUR DISTRICT.

14. T.T. RADHAKRISHNAN,
ADVOCATE,
S/O. E. KRISHNAN NAIR,
THERAMMEL THEKKETHARA HOUSE,
P.O.. KOTHACHIRA,
VIA. PERINGODE, PALAKKAD DISTRICT.

BY ADV. SRI.T.A.RAJAGOPALAN

RESPONDENTS:
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1. STATE OF KERALA,
   REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
   SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE SECRETARY,
   GENERAL EDUCATION DEPARTMENT,
   THIRUVANANTHAPURAM.

3. THE PRINCIPAL SECRETARY TO HIGHER EDUCATION,
   GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM.

4. THE SECRETARY,
   MINISTRY OF HUMAN RESOURCES DEVELOPMENT,
   UNION OF INDIA,
   NEW DELHI.

5. THE CHAIRMAN,
   UNIVERSITY GRANTS COMMISSION,
   NEW DELHI.

6. THE ELECTION COMMISSION,
   NEW DELHI.

7. THE CENTRAL VIGILANCE COMMISSIONER,
   NEW DELHI.

R1 TO R3 BY ADDL.ADVOCATE GENERAL SHRI VENGANNUR CHANDRASEKHARAN NAIR.
BY ADV. SRI.P.K. RAMKUMAR, ADDL.CGSC
BY ADV. SRI. AJITH KRISHNAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. No. 22994 OF 2000

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Dated this the 8th October, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Petitioners in this Original Petition are public spirited citizens and also tax payers. In this Public Interest Litigation, the petitioners seek the following reliefs:

> *"i) To declare that section 11 of the Kerala Education Act, 1958, ultravires of the Constitution as it violates the mandate of Article 16 of the Constitution.*
>
> *ii) To Issue a writ of mandamus or other direction to the State Government to make provisions in the Kerala Education Act and the Kerala University Act and the Calicut University Act and the Mahathma Gandhi University Act so that only candidates selected by the Public Service Commission are appointed as the staff of private colleges and schools including Training Schools in Kerala.*
>
> *iii) To declare that any agreement made by the Kerala Government with private colleges in Kerala for payment of salary of staff while surrendering the power to appoint the staff to the concerned educational agency, is unconstitutional and against the mandate of Article 16 & 14 of the Constitution.*
>
> *iv) To direct the 4th respondent to see to it that the educational field in Kerala is being conducted in accordance with the provisions in the Constitution and the relevant enactments;*
>
> *v) To direct the 5th respondent to take steps so that the funds of the U.G.C. is utilised for the staff of Private Colleges in Kerala, legally and constitutionally.*
>
> *vi) To direct the 6th respondent to give necessary instructions and directions to political parties in Kerala to abide*

by the provisions of the peoples representation Act and the Constitution;

vii) To give appropriate directions to the 7th respondent considering the circumstances of the case;

viii) To issue such other writ, order or direction this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. A perusal of the reliefs sought for in these Original Petitions would clearly indicate that the petitioners are requesting this court to strike down Section 11 of the Kerala Education Act as violative of Articles 16(1), 14, 19(1)(g) 38 (1) and (2) and 39 of the Constitution of India. The ancillary relief sought for in this Original Petition, is to direct the State Government to entrust the selection of teachers of private colleges and aided schools to Public Service Commission.

3. For the very same reliefs, O.P.No. 22024 of 2000 had been filed by one "Samatha Law Society".

4. A Division Bench of this court, after a detailed discussion of the entire issue that was posed and argued, was pleased to dispose of the aforesaid Original Petition and also connected matters. While doing so, this court has observed in paragraphs 24 and 25 as under:

"24. But we do not think that we need straight away strike down Section 11 of the Act as it now stands as arbitrary and as violative of Articles 14, 19 or 21 of the Constitution. We think, especially in the absence of a proper counter affidavit which meets the very serious allegations regarding the irregularities made in these Original Petitions that the State should be given an opportunity to consider this serious aspect in the interests of ensuring quality education and to prevent charges of corruption

to consider the question for itself and to take a decision thereon leaving it to the petitioners to approach this court if they feel aggrieved by the inaction of the State to take any remedial measures or by any decision that may be taken by the State in that regard. Of course, it is not normally the part of the duty of this court to direct what Legislation must be brought forward by the State. That is a matter for the Legislature. When serious constitutional aspects are highlighted and the pernicious practices are alleged, it is necessary for the State to consider whether a tightening up of the process is called for in the circumstances. But this court cannot obviously direct the State to restore the original Section 11 of the Kerala Education Act to the statute book. But in the light of the facts disclosed it appears to us that it is the plain duty of this court to draw the attention of the Government to the evil projected by the petitioners and to consider whether remedial measures are not warranted in such circumstances. Of course, whether the old Section 11 of the Act should be re-enacted replacing the present Section 11 of the Act is a matter for the Legislature or Government to consider. But we think that in exercise of our jurisdiction under Article 226 of the Constitution of India, it is permissible, even necessary to direct the State to bestow its attention to the misuse or abuse of the power conferred by Section 11 of the Act on Managers of aided schools and also to consider whether steps should not be taken to avert the evil or to ensure that quality is not sacrificed at the altar of avarice and self interest. At last it is necessary for the Government to look into this aspect in detail in the interests of education and maintaining the proper standards in education.

25. In this view, we dispose of these Original Petitions and the Writ Appeal by directing the State of Kerala to consider whether any suitable changes should be brought about in the scheme of Sections 9 and 11 of the Act as it now stands with particular reference to the scheme as it was originally

envisaged and in fact enacted after the Supreme Court had given its opinion that the scheme was constitutionally valid and did not offend Article 30 (1) of the Constitution of India. It is necessary for the Government to consider whether the evil sought to be averted by enacting the Kerala Education Act has been achieved by enacting Section 11 in its present form and if it is necessary, to do what is necessary to make the scheme more beneficial to the State and to the citizens seeking quality education."

5. The petitioners are before us seeking the very same reliefs sought for in O.P.No. 22024 of 2000 and connected matters.

6. In our view, the prayers sought for in this Original Petition filed by the petitioners need not be considered by us, since the facts and legal issues involved in this Original Petition are the same as those which were considered and decided by a Division Bench of this Court in O.P. No. 22024 of 2000 and connected matters. In that view of the matter we dispose of this Original Petition as having become unnecessary/infructuous.

7. Pending Civil Miscellaneous Petitions are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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Dated this the 8th October, 2007

J U D G M E N T